

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18702.1. Determining When a Public Official is Making a Governmental Decision.

(a) A public official "makes a governmental decision," except as provided in 2 Cal. Code Regs. section 18702.4, when the official, acting within the authority of his or her office or position:

- (1) Votes on a matter;
- (2) Appoints a person;
- (3) Obligates or commits his or her agency to any course of action;
- (4) Enters into any contractual agreement on behalf of his or her agency;

(5) Determines not to act, within the meaning of subdivisions (a)(1), (a)(2), (a)(3), or (a)(4), above, unless such determination is made because of his or her financial interest. When the determination not to act occurs because of the official's financial interest, the official's determination may be accompanied by an oral or written disclosure of the financial interest.

(b) When an official with a disqualifying conflict of interest abstains from making a governmental decision in an open session of the agency and the official remains on the dais or in his or her designated seat during deliberations of the governmental decision in which he or she is disqualified, his or her presence shall not be counted toward achieving a quorum.

(c) During a closed meeting of the agency, a disqualified official shall not be present when the decision is considered or knowingly obtain or review a recording or any other non-public information regarding the governmental decision.

(d) Notwithstanding subdivision (a) of this regulation, to determine if a public official who holds an office specified in Government Code section 87200 is making, participating in

making, or using or attempting to use his or her official position to influence a governmental decision relating to an agenda item which is noticed for a meeting subject to the provisions of the Bagley-Keene Act (Government Code section 11120 et seq.) or the Brown Act (Government Code section 54950 et seq.) apply 2 Cal. Code Regs. sections 18702.1(a)(1)-(a)(4), 18702.2, 18702.3, 18702.4, and 18702.5.

Comment: Nothing in this section authorizes or prohibits an agency by local rule or custom from requiring a disqualified member to step down from the dais and/or leave the chambers.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 81002, 81003, 87100, 87101, 87105 and 87200, Government Code.

HISTORY

1. New section filed 9-5-85; effective thirtieth day thereafter (Register 85, No. 36).
2. Amendment filed 10-17-88; operative 11-16-88 (Register 88, No. 43).
3. Amendment of subsection (a)(1) filed 3-14-95; operative 3-14-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).
4. Amendment of subsections (a)(2), (a)(3)(E), (a)(4) and (c)-(c)(2) filed 12-11-95; operative 12-11-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 50).
5. Amendment of subsection (a)(1) and Note filed 6-13-97; operative 6-13-97. Submitted to OAL for printing only (Register 97, No. 24).
6. Repealer and new section filed 11-23-98; operative 11-23-98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
7. Editorial correction of 6 (Register 2000, No. 25).

8. Amendment of section and Note filed 1-10-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2).

9. Amendment of subsection (c) filed 1-16-2002; operative 2-15-2002 (Register 2002, No. 3).

10. Amendment of subsection (a) , new subsection (d) and amendment of Note filed 6-10-2003; operative 6-10-2003 (Register 2003, No. 24).